

This matter arises from a petition by the National Labor Relations Board regarding unfair labor practice charges against Mike-Sell's Potato Chip Company (hereinafter "Respondent"). As the Charging Party in the unfair labor practice charges at issue, Local 957 has a substantial interest in the petition and in enjoining the unlawful conduct alleged in the petition and underlying charges.

B. Law and Argument

The Federal Rules of Civil Procedure provide for intervention as a matter of right or by permission of the Court. Rule 24(a) provides the standard for intervention as a matter of right which is as follows:

Upon timely application anyone shall be permitted to intervene in an action:

(1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may, as of practical matter, impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

FRCP (24)(a).

A party who seeks to intervene pursuant to Rule 24(a)(2) thus must show that: (1) it has an interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede its ability to protect its interest; (3) the existing parties do not adequately represent its interests; and (4) the application for intervention is timely. See Michigan State AFL-CIO v. Miller, 103 F.3d 1240, 1245 (6th Cir. 1997); U.S. v. Detroit International Bridge Co., 7 F.3d 497, 499 (6th Cir. 1993); Cuyahoga Valley Railway Co. v. Tracy, 6 F.3d 389, 395 (6th Cir. 1993). Courts construe Rule 24 broadly in favor of the applicant for intervention. See Purnell v. City of Akron, 925 F.2d 941, 950 (6th Cir. 1991).

Charging parties have the ability to intervene in proceedings before federal courts pursuant to Federal Rule of Civil Procedure 24. See Trbovich v. United Mine Workers, 404 U.S. 528 (1972). The federal courts have allowed for charging party intervention under Section 10(j). Levine v. Fry Foods, Inc., No. C 77-304, 1979 WL 15524 (N.D. Ohio, March 19, 1979); Eisenberg, for and on Behalf of N.L.R.B. v. Hartz Mountain Corp., 519 F.2d 138 (3d Cir. 1975).

It is respectfully submitted that the Union is entitled to intervene as a matter of right. As set forth below, the elements of Fed. R. Civ. P. 24(a) have been satisfied.

1. The motion is timely under Fed. R. Civ. P. 24.

Whether a motion pursuant to Rule 24 is timely depends on the facts and circumstances of the particular case and is to be determined by the trial court in its discretion. NAACP v. New York, 413 U.S. 345 (1973). Generally, courts consider four factors in assessing timeliness for both interventions as a matter of right and permissive intervention:

(1) The length of time during which the would-be intervenor knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene; (2) The extent of prejudice to the existing parties as a result of the would-be intervenor's failure to apply as soon as he knew or reasonably should have known of his interest; (3) The extent of prejudice to the would-be intervenor if his petition is denied; and (4) The existence of unusual circumstances militating either for or against a determination that the application is timely.

Howard v. McLucas, 782 F.2d 956, 959 (11th Cir. 1986).

The petition for preliminary injunction under Section 10(j) was filed April 12, 2017. (ECF 1). Respondent filed an Answer to the Petition on April 25, 2017. The Union's motion is timely under the circumstances.

Further, no current parties can demonstrate prejudice due to a failure to request intervention as soon as the would-be intervenor knew or reasonably should have known of his interest. The Union submits this prong is moot in that there has not been any failure to apply which could possibly result in prejudice.

However the Union would suffer significant prejudice were its motion for intervention denied. Denial would relegate the Union upon whose members the Respondent's unfair labor practices have targeted to the role of a secondary observer. Fairness and judicial economy compel granting the motion to intervene.

2. The Union presents questions of law or fact in common to the main action.

Permissive intervention lies in the discretion of the trial court. See, Secretary of Department of Labor v. King, 775 F.2d 666 (6th Cir. 1985). Local 957 respectfully submits that this Court should grant permissive intervention if it is determined it may not intervene as of right. The violations of the National Labor Relations Act in which the Respondent is alleged to have engaged concerns the Union's collective bargaining agreement and the members it represents. While Petitioner, and Counsel for the Petitioner, are experienced in Section 10(j) proceedings and will represent the National Labor Relations Board with distinction, the Union's interests in having the Respondent's alleged unlawful activity at issue enjoined may not be fully developed if it does not have the opportunity to participate fully in these proceedings. As such, the Union has an interest in this action for injunctive relief under Section 10(j) of the Act that should be protected by permitting the Union to intervene in this action.

The Union respectfully requests that this Court grant the Union's motion to intervene.

Respectfully submitted,

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